

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CRAIG BUCK, KENNETH MICCICHE, VALERIE  
L. PAWSON, CAROLINE MARSHALL-SMITH,  
WANDA MILLS, JEFF GOLUMBUK, ANESIA  
KALAITZIDIS, ATHANASE KARAGIORGOS,  
AND JENNIFER TSOUVRAKAS, ON BEHALF OF  
THEMSELVES AND OTHERS

Plaintiffs

v.

CIVIL ACTION NO. 04-12558-NMG

ALASKA AIRLINES, AMERICAN AIRLINES,  
CONTINENTAL AIRLINES, DELTA AIR LINES,  
INC., NORTHWEST AIRLINES, SOUTHWEST  
AIRLINES CO., d/b/a SOUTHWEST AIRLINES,  
CHINA EASTERN AIRLINES CORP. LTD.,  
CHINA SOUTHERN AIRLINES CO. LTD.,  
AER LINGUS LIMITED, ALITALIA-LINEE  
AEREE ITALIANE S.P.A., d/b/a ALITALIA  
AIRLINES, BRITISH AIRWAYS, PLC, d/b/a  
BRITISH AIRWAYS, DEUTSCHE LUFTHANSA,  
A.G., d/b/a LUFTHANSA AIRLINES, OLYMPIC  
AIRWAYS-SERVICES, SA, d/b/a OLYMPIC  
AIRWAYS, AIR TRANSPORT ASSOCIATION  
OF AMERICA, INC., AIRLINES REPORTING  
CORP., and the FEDERAL AVIATION  
ADMINISTRATION

Defendants

MOTION OF THE DEFENDANT, ALITALIA-LINEE AEREE ITALIANE S.P.A.,  
d/b/a ALITALIA AIRLINES, TO DISMISS THE  
PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)

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Defendant, Alitalia-Linee Aeree Italiane S.P.A., d/b/a Alitalia Airlines ("Alitalia"),  
hereby moves to dismiss the Plaintiffs' Amended Complaint, Jury Claim, and Request for Class  
Certification (the "Amended Complaint") pursuant to Fed. R. Civ. P. 12(b)(6).

As grounds for its motion, Alitalia states that dismissal is proper because the plaintiffs'  
claims are expressly preempted and barred by federal law and, as a matter of law, the plaintiffs

have failed to state a claim as to each of the separate counts alleged in the Amended Complaint. In support of this Motion the defendant adopts and incorporates by reference those arguments contained in the Memorandum of Law in Support of the Domestic Defendants' Motion to Dismiss.

Alitalia further states that it is an "agency" or "instrumentality" of a "foreign state" within the meaning of 28 U.S.C. §1603 *et seq.* (the Foreign Sovereign Immunities Act of 1976) and, accordingly, is entitled to, and does here assert, all of the privileges, immunities and defenses provided to ALITALIA by virtue of said Act, *codified* at 28 U.S.C. §§1330, 1332, 1391(f), 1441(d) and 1602-1611, including the right to trial by the Court without jury.

WHEREFORE, the defendant, Alitalia, respectfully requests that the Amended Complaint be dismissed pursuant to Fed. R. Civ. P. 12(b)(6), and for such other and further relief as this Court deems just and proper.

ALITALIA-LINEE AEREE  
ITALIANE S.P.A.,  
d/b/a ALITALIA AIRLINES  
By its attorneys,

/s/ Kevin C. Cain  
Kevin C. Cain, BBO #550055  
Peabody & Arnold LLP  
30 Rows Wharf  
Boston, MA 02110  
(617) 951-2100

Dated: July 29, 2005

LOCAL RULE 7.1(A)(2) CERTIFICATION

I certify that counsel for Alitalia attempted in good faith to resolve the issues presented in this Motion with counsel for the Plaintiffs but was unable to do so.

/s/ Kevin C. Cain  
July 29, 2005